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October 4, 1995

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## BY HAND DELIVERY

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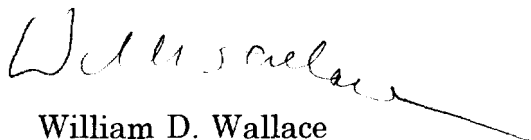
RE: IB Docket No. 95-117

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Loral/QUALCOMM Partnership, L.P., are an original and five copies of its "Comments" in the above-referenced docket.

Should there be any questions regarding this matter, please communicate with this office.

Respectfully submitted,

  
William D. Wallace

Enclosure

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ORIGINAL

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )

Streamlining the Commission's )  
Rules and Regulations for Satellite )  
Application and Licensing Rules )  
\_\_\_\_\_ )

IB Docket No. 95-117

DOCKET FILE COPY ORIGINAL

COMMENTS OF  
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Date: October 4, 1995

## SUMMARY

Loral/QUALCOMM Partnership, L.P. (LQP), generally supports the Commission's proposed modifications to the Part 25 rules governing licensing of space and earth station applications set forth in the Notice of Proposed Rulemaking. However, LQP recommends that the issue of whether to adopt a blanket waiver of Section 319(d) of the Communications Act of 1937, as amended, for construction of satellites be deferred and considered in the International Bureau's recently-announced review of satellite licensing policies. Deferral to the proceeding on satellite licensing policies would provide a better context for consideration of the blanket waiver. Policy issues related to such a rule have been raised in that proceeding, whereas the proposals in the Notice of Proposed Rulemaking are focused on modifications to the rules related to the form and content of applications.

With respect to the other proposals in the NPRM, LQP supports the Commission's modifications to Sections 25.114(c) and 25.140(c) to eliminate unnecessary and redundant requests for information and to clarify the remaining rules. In keeping with these proposals, LQP recommends that the Commission eliminate Section 25.143(e)(iii). This rule requests commercially sensitive information which, under the policies stated in the NPRM, does not appear necessary for submission to the Commission. LQP also supports the proposed revisions to Section 25.114(a) to simplify applications for constellations of satellites

and Section 25.155(b)(2) to clarify satellite service application cut-off rules.

LQP recommends that the Commission adopt its proposed Form 312, with a few minor revisions. The new consolidated format should prove beneficial to applicants and to the Bureau by facilitating the filing and processing of applications. In this regard, LQP suggests correction of revised Section 25.115(d) to reflect the requirements for user earth station applications for both non-voice, non-geostationary and MSS Above 1 GHz satellite systems. LQP also supports the certification process for minor modifications to earth station applications and requests an opportunity for satellite operators to comment on the recommendation of the RTCA, Inc. for an out-of-band emissions standard.

## TABLE OF CONTENTS

	<u>PAGE</u>
I. CONSIDERATION OF A BLANKET WAIVER OF SECTION 319(D) FOR CONSTRUCTION OF SPACE STATIONS SHOULD BE DEFERRED . . . . .	3
II. THE COMMISSION SHOULD ADOPT THE PROPOSALS DESIGNED TO ELIMINATE REDUNDANCY AND CLARIFY EXISTING SATELLITE APPLICATION RULES . . . . .	5
III. THE COMMISSION SHOULD ADOPT NEW FORM 312 . . . . .	9
IV. THE COMMISSION SHOULD PROVIDE SATELLITE SYSTEM OPERATORS AN OPPORTUNITY TO COMMENT ON THE OUT-OF-BAND EMISSIONS STANDARDS RECOMMENDED BY THE RTCA . . . . .	11
V. THE COMMISSION'S REVISED PROCEDURE FOR MINOR MODIFICATIONS TO EARTH STATIONS SHOULD BE ADOPTED . . . . .	12
VI. CONCLUSION . . . . .	13

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Streamlining the Commission's	)	IB Docket No. 95-117
Rules and Regulations for Satellite	)	
Application and Licensing Rules	)	
_____	)	
To: The Commission		

COMMENTS OF  
LORAL/QUALCOMM PARTNERSHIP, L.P.

Pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. § 1.415), Loral/QUALCOMM Partnership, L.P. (LQP), hereby submits its comments on the Notice of Proposed Rulemaking (NPRM), FCC 95-285 (released August 11, 1995), in this proceeding.

On January 31, 1995, LQP was authorized by the Commission to construct, launch, and operate GLOBALSTAR, a low-earth orbiting Mobile-Satellite Service (MSS) system in the 1.6/2 4 GHz bands. Loral/QUALCOMM Partnership, L.P., 10 FCC Rcd 2333 (1995). Based on its active participation in the Commission's satellite application processes since June 1991, LQP has a substantial interest in this proceeding and welcomes the proposals to streamline and make more efficient the rules governing satellite system applications. The proposed modifications to Part 25 should facilitate applications in new satellite services and applications for renewal, replacement and/or expansion of existing systems.

While agreeing that the application procedures at issue in this docket should be revised substantially as suggested in the NPRM, LQP notes that the International Bureau recently announced that it is initiating a separate major review of the Commission's satellite licensing policies "to ensure that regulatory procedures keep pace with new technologies and recent developments in satellite markets." See Public Notice, "International Bureau to Review Satellite Licensing Policies," Report No. IN 95-25 (released September 20, 1995). LQP intends to address the issues raised in that Public Notice separately. However, with respect to the proposal to eliminate the requirement to obtain satellite construction authority (NPRM, ¶¶ 7-8) there is overlap between the issues on which comment is sought in the NPRM and in the Public Notice. Accordingly, pending development by the Bureau of proposals to revise the Commission's space station licensing policies, it is premature to adopt in this docket a blanket waiver of the required authority to commence construction, and a decision on that issue should be deferred.

LQP recommends that the Commission adopt forthwith the specific revisions to the Part 25 rules governing the form and substance of space and earth station applications. These proposals to streamline space and earth stations applications will ensure that such applications can be more efficiently prepared by applicants and processed by the Commission Staff. As a result, new and enhanced satellite services should be made available to the public more quickly, and thereby serve the public interest.

I. CONSIDERATION OF A BLANKET WAIVER OF SECTION 319(D) FOR CONSTRUCTION OF SPACE STATIONS SHOULD BE DEFERRED.

As part of its revisions to Part 25, the Commission proposes to provide a blanket waiver of the requirement of Section 319(d) of the Communications Act of 1934, as amended (47 U.S.C. § 319(d)), that each space station applicant obtain specific authority to commence construction of satellites. Instead, the Commission proposes to permit space station applicants to begin construction of satellites at any time at their own risk. NPRM, ¶¶ 7-8. This modification of the rules would have the effect of granting a blanket waiver of Section 319(d) to any and all space station applicants, unlike the current procedure which requires a written request and grant of a waiver on a case-by-case basis. See NPRM, ¶ 7.

LQP generally supports the specified goals of this proposal to provide "industry with increased flexibility in their long-term business planning, their construction of space stations, and their delivery of spares," and "to ensure that the public receives new and innovative services as quickly as possible." NPRM, ¶ 8. However, the primary reason for the blanket waiver of Section 319(d) appears to be that "[t]he process of licensing a new satellite often takes years, especially where no frequency allocation exists." Id. Waiving the construction authority requirement of Section 319(d) does not appear to address delays which have occurred in licensing satellite systems. As the Commission suggests, several proceedings may be required before an applicant can be licensed, including



adoption of frequency allocations and service rules and completion of review of multiple applications by Commission Staff.

Thus, the issue of delay is one that should be considered in the context of revisions to the Commission's satellite licensing policies such as that recently initiated by the International Bureau. A comprehensive review of satellite licensing policies would provide a better context for comment on the complex issues regarding this proposal. For example, adoption of a blanket construction waiver may implicate issues such as how to process mutually exclusive applications and what financial standard to apply to space station applicants. These two issues are proposed for consideration in the Bureau's review of satellite licensing policies. See Public Notice, Report No. IN 95-25.

Accordingly, LQP recommends that the Commission retain the current requirement that space station applicants must obtain construction authority or a waiver of Section 319(d) prior to commencement of construction, pending development of revised procedures for licensing space stations.<sup>1</sup>

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<sup>1</sup> In granting Section 319(d) waivers, the Commission generally authorizes the applicant to initiate construction and spend a certain amount during a specific period of time. See, e.g., PanAmSat, L.P., 8 FCC Rcd 5120, 5121 (1993). The proposal in the NPRM includes no limit on time or spending. In the event that the Commission adopts this proposal, requiring an applicant to request authority for a specific level of spending over a specific period of time may be useful as a structured approach to this new policy.

II. THE COMMISSION SHOULD ADOPT THE PROPOSALS  
DESIGNED TO ELIMINATE REDUNDANCY AND CLARIFY  
EXISTING SATELLITE APPLICATION RULES.

The Commission has proposed several modifications to Part 25 which are designed to eliminate redundant rules and to clarify the information to be provided in satellite applications. NPRM, ¶¶ 9-16. With a few modifications discussed below, LQP generally supports these proposals.

A. Redundant and Unnecessary Rules. LQP agrees with the proposals to eliminate from the satellite application rules the following requirements:

- 47 C.F.R. § 25.140(c) -- detailed statement of estimated investment and operating costs for the expected lifetime of the facility;
- 47 C.F.R. § 25.114(c)(17) -- detailed schedule of the estimated investment costs and operating costs by year and estimated annual revenue requirements.

As the Commission notes, the projections required by these rules are not necessary to determine whether an applicant is financially qualified. NPRM, ¶ 9. Moreover, these disclosures implicate an applicant's business plan for the system, and, therefore, may include proprietary financial information. NPRM, at 5 n.12. One of the principles underlying this proceeding is to eliminate costs arising from unnecessary "[g]overnment interference with market forces." NPRM, ¶ 35. Accordingly, the Commission is correct in deciding to eliminate these two requirements for information related to business decisions of applicants.

The Commission also proposes to eliminate the requirements to describe the following matters in a satellite application narrative:

- 47 C.F.R. § 25.114(c)(8) -- estimated number and geographic distribution of earth stations, and proposed arrangements for access to the system between the premises of the users and earth stations for domestic satellites;
- 47 C.F.R. § 25.114(c)(12) -- launch vehicles and arrangements for securing launch services.

Generally, these items are subject to change, creating the potential burden of updating information which is not used in the review of the application. LQP agrees with the Commission's conclusion that these two items of information are not necessary in the review of satellite station applications.

Also proposed for elimination are:

- 47 C.F.R. § 25.114(c)(9) -- estimated demand for services, and entities to be served, and estimated transponder capacity under each of the proposed operating conditions;
- 47 C.F.R. § 25.114(c)(16) -- for applications requesting additional or replacement satellites, detailed information concerning the historical use of the system.

LQP again agrees with the proposal to eliminate these requirements. As the Commission recognizes, projections of demand and a history of usage are primarily of interest for analysis of a business plan. If the applicant is willing to go forward with the system application on the basis of its service proposal and history of operations, then the Commission need not second-guess that decision as long as the applicant is otherwise qualified. See NPRM, ¶ 10.

LQP also agrees that Section 25.114(c)(15) is redundant to Section 25.114(c)(9), and so Section 25.114(c)(15) may be eliminated.

In keeping with these proposals, LQP recommends that the Commission eliminate Section 25.143(e)(iii) of the rules governing 1.6/2.4 GHz MSS service.<sup>2</sup> Similar to Section 25.114(e)(16), that provision requests that licensees include in their annual report:

A detailed description of the utilization made of the in-orbit satellite system. That description should identify the percentage of time that the system is actually used for U.S. domestic or transborder transmissions, the amount of capacity (if any) sold but not in service within U.S. territorial geographic areas, and the amount of unused system capacity . . .

47 C.F.R. § 25.143(e)(iii). As the Commission is well aware, this information may be commercially sensitive, and it is not clear why it is necessary for retention in the Commission's records. The amendments proposed in this docket are designed to "decrease the regulatory burden on industry" and "to ensure that . . . service providers are not hampered by unnecessary . . . regulations." NPRM, ¶ 35. Elimination of Section 25.143(e)(iii) would serve both these goals, and LQP recommends that the rule be so modified.

B. Clarification of Existing Application Rules. LQP agrees that the rules proposed for clarification are in need of substantial modification.<sup>3</sup> NPRM, ¶¶ 11-

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<sup>2</sup> In its comments on the Big LEO NPRM for service and technical rules, LQP supported "in principle" adoption of this aspect of the reporting requirements. Since the Commission has now determined that it can assume that operators seeking replacement and/or expansion of their systems are operating at full capacity, NPRM, ¶ 10, providing this information on an annual basis for an operating system appears unnecessary.

<sup>3</sup> LQP agrees that Section 25.114(c)(10) should be modified to specify that this section, which requests information on orbit characteristics, applies only to geostationary satellites. NPRM, ¶ 12.

12. Section 25.114(a) should be amended to permit applicants to submit one consolidated system proposal that would contain information common to all space stations in a constellation. Clarification of this rule will eliminate the burdensome requirement that applicants file distinct applications for individual satellites within their constellation even if the satellites are technically identical. This would greatly reduce the paperwork necessary to submit an application for a constellation of multiple satellites, such as GLOBALSTAR, in which each satellite is technically identical to the rest.

LQP also endorses the proposal to modify Section 25.155(b)(2) to eliminate the automatic triggering of the "cut-off" period when no "cut-off" date is specified in a Public Notice accepting applications for filing. Under the new rule, no "cut-off" period will be triggered unless a "cut-off" date has been specified explicitly in a Public Notice. Adoption of this proposal will eliminate confusion such as occurred when AMSC's lower L-band application was placed on Public Notice as "accepted for filing" in November 1993.<sup>4</sup> Moreover, 30 days is too little time to provide for filing of a competing application. The Commission should give at least 60 days lead time to prepare applications, and, therefore, establishing a specific date in each Public Notice is a better procedure.

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<sup>4</sup> See LQP's Objection to Procedure and Request for Clarification and Proper Establishment of Cut-Off Date (filed December 1, 1993); LQP's Opposition (filed December 3, 1993) with reference to File No. 59-DSS-MP/ML-93.

### III. THE COMMISSION SHOULD ADOPT NEW FORM 312.

LQP supports the Commission's proposal to consolidate all forms relating to space and earth station applications into a unified, use-schedules-as-needed format. NPRM, ¶¶ 26-28. The current multiplicity of forms which may be applicable to various types of satellite system proposals is confusing and unnecessary. The consolidated format proposed in the NPRM should prove beneficial to applicants and the Bureau by making it simpler to file and process applications.

Consistent with the Commission's goal of simplifying the application form, LQP recommends two minor modifications to clarify the information requested in the "Basic Qualifications" section of new Form 312. First, the language of Question 32 should be modified to reflect more accurately the information sought in the question. Currently the form asks whether the application "is inconsistent with any of the Commission's Rules" and requests attachment of exhibits for requests for waivers and exemptions. This question could be interpreted to request a broader inquiry from applicants answering "no" than applicants answering "yes." Given the nature of the information to be attached, this incongruity can be easily corrected.

Accordingly, LQP recommends that the Commission modify Question 32 to state as follows:

Does the applicant request any waivers of or exemptions from the Commission's Rules? If "Yes," attach as Exhibit(s) \_\_\_\_\_ copies of the requests for waivers or exemptions with supporting documents.

Because the question is designed to identify for the reviewer whether any waiver or exemptions are requested, a more direct question, such as that above, is warranted.<sup>5</sup>

Question 39 ("Does the transferee/assignee now hold any obligations of licensee corporation?") is similarly confusing and needs modification. First, it is not clear whether the question is needed at all. Second, the language of the question is confusing in that it could refer to license-related obligations or general corporate obligations. The latter appear irrelevant: the former could be sought more directly with a question, such as:

Attach as Exhibit \_\_\_\_ a description of the current relationship, if any, between the transferee/assignee and the transferor/assignor with respect to the authorized station(s), including, as appropriate, any obligations of the licensee corporation related to the authorized station(s) held by the transferee/licensee and methods and dates by which such obligations were acquired.

In this proceeding, the Commission is proposing to be less intrusive into the business affairs of applicants. NPRM, ¶ 35. Question 39 could be interpreted as much more intrusive than is necessary for review of assignment and transfer of control applications. Either the question should be eliminated, or LQP's proposed modification, which requires the submission of only potentially relevant information, should be adopted.

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<sup>5</sup> In addition to modifying this question to provide a space to number exhibits, the Commission should provide such a space in all questions which request narrative information so that exhibits may be numbered consecutively throughout the application and associated with the relevant question.

LQP also requests correction of an apparent misstatement in the revision of Section 25.115(d) to reflect adoption of the new Form 312. Currently, that rule applies to blanket licensing for user transceivers of both Non-Voice, Non-Geostationary satellite systems and MSS Above 1 GHz satellite systems. 47 C.F.R. § 25.115(d). The revised rule would only apply to NVNG systems, and no new rule was proposed for MSS Above 1 GHz systems. Accordingly, LQP recommends that new Section 25.115(d) be revised to read:

User transceivers in the non-voice, non-geostationary and 1.6/2.4 GHz mobile-satellite services need not be individually licensed. Service vendors may file blanket applications for transceiver units using FCC Form 312, Main Form and Schedule C, and specifying the number of units to be covered by the blanket license. In addition, applicants in the NVNG MSS service shall provide the information described in § 25.135. Applicants in the 1.6/2.4 GHz MSS service shall demonstrate that the stations comply with the technical requirements specified in § 25.213.

This correction eliminates any confusion in the proposed rule and reflects the substance of the current rule.

IV THE COMMISSION SHOULD PROVIDE SATELLITE SYSTEM OPERATORS AN OPPORTUNITY TO COMMENT ON THE OUT-OF-BAND EMISSIONS STANDARDS RECOMMENDED BY THE RTCA.

In the NPRM, the Commission noted that it had entered into a Memorandum of Understanding with National Telecommunications and Information Administration and Federal Aviation Administration to develop technical standards for out-of-band emissions to permit MSS systems and a global navigational satellite system to operate compatibly. NPRM, ¶ 34. The RTCA, Inc. is developing these standards, and, in the NPRM, the Commission served "notice"



on interested parties that it intended to propose adoption of the recommendations of the RTCA. Id.

LQP is an active participant in the RTCA committee which is developing the out-of-band emissions standard for GNSS. The standard developed by the RTCA may prove beneficial to both MSS systems and GNSS. In any event, LQP agrees that before the product of this private organization can be adopted by the FCC as a rule or policy, a notice-and-comment rulemaking proceeding should be initiated on the specific language of the rule. See Federal Farm Credit Funding v. Farm Credit Admin., 731 F. Supp. 217, 223 (E.D. Va. 1990) ("When an [agency] interpretation attempts to define a standard established by authorities outside the agency and has the force and effect of a substantive rule, the court will look beyond the agency's characterization of its own action and require that notice and comment procedures be observed"). Consideration of RTCA's recommendation in an NPRM is necessary to ensure that the Commission receives input from system operators on any standard which may be adopted.

V. THE COMMISSION'S REVISED PROCEDURE FOR MINOR MODIFICATIONS TO EARTH STATIONS SHOULD BE ADOPTED.

In addition to modifying satellite application rules, the Commission has proposed to revise the rules governing earth station applications. LQP supports the proposal to institute a certification procedure for minor earth station modifications. NPRM, ¶ 23. To the extent that a modification does not have the

potential to increase interference, the operator should be allowed to make the modification without a cumbersome application process.

## VI. CONCLUSION

LQP recommends that the Commission adopt the proposals in the NPRM discussed above as modified. These rules have the potential to simplify and make more efficient the procedures used to bring satellite services to the public. As a current MSS licensee, LQP endorses the Commission's approach.

Respectfully submitted,

LORAL/QUALCOMM PARTNERSHIP, L.P.

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Date: October 4, 1995

## CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 4th day of October 1995, caused copies of the foregoing Comments of Loral/QUALCOMM Partnership, L.P. to be delivered via hand delivery (indicated with \*) or by U.S. mail, postage prepaid, to the following:

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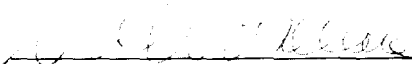
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